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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4853 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJ.STATE JUDICIAL STENOGRAPHERS/P.A. ASSO.,

Versus

REGISTRAR, HIGH COURT OF GUJARAT.

Appearance:

1. Special Civil Application No. 4853 of 1994

MR JR NANAVATI for Petitioner.

MR JB PARDIWALA for Respondent No. 1

LAW OFFICER BRANCH for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 1/04/2003

CAV JUDGEMENT

The petitioner, in this petition, is the registered Association of Judicial Stenographers/Personal Assistants serving in the courts under the control of the High Court of Gujarat in the State of Gujarat. The

petitioner has prayed for a mandatory direction from this Court directing the respondent who is the Registrar of the High Court of Gujarat at Ahmedabad to upgrade the posts of Stenographers Grade-III with effect from the date on which the incumbents made themselves eligible and qualified for the post of Stenographers Grade-II and to give all consequential benefits to the members of the petitioner Association. The petitioner has also prayed for quashing and setting aside the decision taken by the respondent as contained in the letter dated 7th February 1994 (Annexure "H" to the petition) whereby the petitioner's demand to upgrade temporarily downgraded post of Stenographer Grade-III as Stenographer Grade-II with effect from the date of acquiring necessary qualifications/passing GCC Examination required for appointment to the post of Stenographer Grade-II by the incumbent concerned, was rejected.

2. The brief facts, giving rise to the present petition, are that the Government of Gujarat in Legal Department by its Resolution dated 17th October 1981 accorded sanction to the creation of 200 posts of Stenographer Grade-II in the pay-scale of Rs. 475-800 in the subordinate courts for the period upto 28th February 1982 in the first instance with effect from the date from which the posts were filled-in. It was provided in the said resolution that the distribution of the said posts of Stenographer should be made by the High Court and that the classification of the said 200 posts into those of the English Stenographer and Gujarati Stenographer was to be made according to the requirements of the courts, by the High Court.

3. It is stated in the petition that the respondent had exercised its powers conferred under Article 235 of the Constitution of India and temporarily downgraded 143 posts out of the 200 posts sanctioned by the Government into the post of Stenographer Grade-III in the pay-scale of Rs. 350-500 until further orders and classified them as Gujarati Stenographer Grade-III, and out of the remaining 57 posts of Stenographer Grade-II, 15 posts were ordered to be classified as English Stenographer Grade-II, and 13 posts were ordered to be classified as Gujarati Stenographer Grade-II, and these posts were ordered to be distributed as per the statement annexed with the High Court's order dated 6th April 1982. It was further provided in the said order that further orders for classification and distribution of the remaining 29 posts would be issued in due course.

4. It is further stated in the petition that the

Government of Gujarat in Legal Department by Resolution dated 29th February 1988 accorded sanction for conversion of 175 temporary posts of Stenographer Grade-II created for the subordinate courts having pay-scale of Rs. 1400-2600 into permanent with effect from 1st March 1988 and it was further provided in the said resolution that the distribution of the said posts of Stenographers should be made by the High Court and the classification of the said posts into those of the English Stenographers and Gujarati Stenographer was to be made according to the requirements of the courts, by the High Court. Thereafter, the Registrar of the High Court had sent communications to the District Courts with regard to downgrading of the post of Stenographer Grade-III and as and when requisite qualifications obtained by them, to upgrade them. The petitioner Association has also made representation dated 31st August 1991 praying inter alia for upgradation of the post of Stenographer Grade-III into the post of Stenographer Grade-II. However, the same was rejected vide communication dated December 19, 1991. The petitioner, thereafter, approached again and pursuant thereto the Registrar of the High Court has informed all the District Judges vide his letter dated 11th March 1993 that the benefit of upgradation of temporarily downgraded post of Stenographer Grade-III who were entitled and qualified to get Stenographer Grade-II post into that of Stenographer Grade-II would be given to them with effect from 12th August 1991. However, the demand in respect of giving retrospective effect to the Stenographers Grade-II who have been upgraded from the post of Stenographer Grade-III was rejected by letter dated 7th February 1994 sent by the Registrar to the petitioner association.

5. Being aggrieved by the aforesaid decision taken by the High Court on its administrative side while exercising the powers conferred under Article 235 of the Constitution of India, the petitioner filed the present petition before this Court under Article 226 of the Constitution of India invoking the writ jurisdiction of this Court.

6. On issuance of the notice, an appearance was filed on behalf of the respondent and detailed affidavit was filed by Deputy Registrar of the High Court. Heard Mr. JR Nanavati, learned advocate appearing for the petitioner and Mr. JB Pardiwala, learned advocate appearing for the respondent. Mr. Nanavati has submitted that the Stenographers Grade-III were entitled to upgradation retrospectively as soon as they qualify themselves for appointment to the post of Stenographer

Grade-II. He has further submitted that various representations were made by the petitioner to the High Court and the High Court has finally given the benefit of upgradation by order dated 11th March 1993 with effect from 12th August 1991. He has submitted that however the said date namely 12th August 1991 is arbitrary and has no rational connection with the question of upgradation. Mr. Nanavati has further submitted that the Government has sanctioned 200 posts of Stenographer Grade-II by Resolution dated 17th October 1981 in the pay-scale of Rs. 475-800 and the High Court has arbitrarily by its order dated 6th April 1982 only allotted 57 posts of Stenographer Grade-II, out of which 15 posts were classified as English Stenographer Grade-II and 13 posts were classified as Gujarati Stenographer Grade-II and 29 posts remained unclassified. The decision of the High Court to put 143 posts in Stenographer Grade-III was arbitrary and unjustified inasmuch as the Government has sanctioned 200 posts of Stenographer Grade-II by aforesaid resolution. He has further submitted that since the Government has sanctioned 200 posts of Stenographer Grade-II the members of the petitioner association were entitled to the benefit of upgradation in accordance with the said resolution and the fixing of 12th August 1991 by order dated 11th March 1993 by the High Court in administrative side was absolutely illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Mr. Nanavati has further submitted that having regard to the provisions contained in Article 235 of the Constitution of India, the High Court was bound in law to fill-in all 200 posts of Stenographer Grade-II in the pay-scale of Rs. 475-800, and particularly when upgradation was given retrospectively, the same should have been in accordance with the resolution passed by the Government. Mr. Nanavati has further submitted that the Government of Gujarat has issued resolution dated 17th January 1979 wherein the Government has directed that where and to the extent that when Stenographers Grade-II were not available in the courts subordinate to the High Court, posts of Stenographer Grade-II should be downgraded and filled-in by Stenographer Grade-III with a condition that the said downgraded posts should be upgraded again as and when incumbents qualify themselves for appointment as Stenographer Grade-II. He has therefore submitted that this resolution squarely applies to the petitioner's case and the members of the petitioner association would be entitled to the benefit of upgradation as and when the incumbents qualify themselves for the appointment as Stenographer Grade-II. Mr. Nanavati has further submitted that certain District Judges have already

upgraded the incumbents when they achieved their requisite qualifications for appointment as Stenographer Grade-II. In support of his submission, he has placed on record the orders passed by the District Judge, Junagadh on 25th August 1981; District Judge, Mehsana on 9th January 1987; and District Judge,Rajkot on 28th June 1992. He has therefore submitted that the prayer made by the petitioner association in the present petition is in accordance with the provisions of law as well as in accordance with the resolution issued by the State Government and the said benefit should therefore be granted by this Court to the members of the petitioner association.

7. On the other hand, Mr. JB Pardiwala, ld. advocate appearing for the respondent strongly opposed the petition and submitted that the members of the petitioner association do not deserve for the relief claimed in the petition. He has submitted that temporarily downgraded posts of Stenographer Grade-III have been upgraded as Stenographer Grade-II with effect from 12th August 1991 by the High Court and therefore the persons who had been originally recruited and appointed as Stenographer Grade-III should not be upgraded retrospectively even if they are qualified for the post of Stenographer Grade-II at the time of their appointment to the post of Stenographer Grade-III or even if they acquired the requisite qualification for Stenographer Grade-II after their appointment to the post of Stenographer Grade-III and before the upgradation of Stenographer Grade-III as Stenographer Grade-II. He has further submitted that the High Court has control over the District Courts and Courts subordinate thereto including the posting and promotion and grant of leave to persons belonging to the judicial service of the State as provided by Article 235 of the Constitution of India and such a control is absolute to the extent so provided. The Government instructions, if any, interfering in such control are not binding to the High Court under Article 235 of the Constitution of India. He has further submitted that the High Court alone is made the sole custodian of the control over the judiciary including its staff. He has also submitted that no fundamental right of the members of the petitioner association is violated by virtue of temporary downgradation or by not giving the benefit retrospectively. He has further submitted that the members of the petitioner association have accepted the appointment of Stenographer Grade-III without any protest or resistance. The appointments were absolutely unconditional and once having accepted such appointments it was not open for them to claim the benefit

retrospectively, that is from the date of their appointments. He has also submitted that the initial appointment was within the competence or within the powers of the High Court and the decision with regard to upgradation was also well within the competence of the High Court. The denial of claim of upgradation with retrospective effect did not violate any fundamental right of the members of the association. He has further submitted that an identical issue was raised before this Court in Special Civil Application No. 9812 of 1994, and this Court [Coram: S.K. Keshote, J.] vide order dated 20.9.1999 has held that, "Merely on invitation of application for Stenographer, Grade-II, and even on their selection for this post, the petitioners have not acquired any indefeasible right of appointment as Gujarati Stenographer, Grade-II as for the satisfactory reason the respondent No.2 is within its competence even not to make appointments or make appointments on downgraded posts." It was further held that it was a case where none of the legal or fundamental rights of the petitioner was being infringed. Based on this decision, as well as on the basis of the submissions made by him, Mr. Pardiwala has submitted that no relief should be granted to the petitioner association and the petition should be dismissed.

8. After having heard the learned advocates appearing for the respective parties, and after having gone through the pleadings of the parties as well as the documents produced before this Court, I am of the view that though there is an arguable case in favour of the petitioner, it is required to be mentioned here that since a collective decision is taken by the High Court on its administrative side in exercise of the powers under Article 235 of the Constitution of India and the said decision has been considered by the learned Single Judge of this Court while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India and judicially found the said decision as correct and not violative of any of the fundamental rights of the members of the petitioner association, I do not think it proper to take any different view in the matter. Except the fact that the State Government has sanctioned 200 posts of Stenographer Grade-II and except the fact that the advertisements were issued for the said posts of Stenographer Grade-II, all other facts are stated to be tilted in favour of the respondent. The submissions made by Mr. Pardiwala did also carry equal weightage. This Court cannot ignore the fact that the members of the petitioner association were appointed as Stenographer Grade-III and they have accepted those appointments

without any protest or resistance. The High Court has got ample powers under Article 235 of the Constitution of India. It is a settled legal position that when such a constitutional function was exercised by the administrative side of the High Court, any review thereon should have been made not only with great care and circumspection but to find strictly to the parameters of judicial review set by the Apex Court from time to time. There is nothing on record to enable this Court to take a view that the decision taken by the High Court with regard to downgradation of the post of Stenographer Gr.II and giving benefit of upgradation with retrospective effect from 1991 is in any manner either unreasonable, unjust or improper. More over, the issue involved in the present petition is already decided by this Court while exercising its writ jurisdiction under Article 226 of the Constitution of India, and while deciding the said issue, this Court had taken note of the facts that the petitioners have accepted appointments without any protest and further they have not challenged that order of giving appointments as Stenographer Grade-III even prior to 12th August 1991 or thereafter. The High Court, with effect from 12th August 1991, upgraded the posts to that of Stenographer Grade-II and even thereafter the petitioner waited to challenge the action of the year 1982 of the respondent till 1994. This Court has, therefore, rightly come to the conclusion that the petitioners have no case on merits as well as challenge to the action of the respondent suffers from the vice of delay and latches. This Court has further observed that the respondent has all the competence to lower down the grade of the posts, and it has been lowered down before the appointmen
could be taken.

9. In view of the aforesaid facts and circumstances of the case, and in view of the decision taken by the learned Single Judge of this Court in the case of PC Parmar Vs. District Judge, Rajkot & Another in Special Civil Application No. 9812 of 1994, I hold that the members of the petitioner association are not entitled to the upgradation to the post of Stenographer Grade-II from the date of their appointment as Stenographer Grade-III. The petition is, therefore, dismissed. Rule is discharged. No order as to costs.

[K.A. Puj, J.]
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